

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHARLES DEMPSEY, individually, and L.D. by her
father and natural guardian, CHARLES DEMPSEY,

Plaintiff,
vs.

THE CITY OF ROCHESTER, a municipal entity,
JAVIER ALGARIN, ADAM GORMAN, "JOHN DOE"
RPD OFFICER RESPONSIBLE FOR TRAINING
JAVIER ALGARIN,

ANSWER TO THE
SECOND AMENDED
COMPLAINT

Case No. 19-cv-6780 (EAW)

Jury Trial Demanded

Defendants.

Defendants, by their attorney Timothy R. Curtin, Esq., Corporation Counsel, Patrick Beath, Esq., of counsel, answer the Second Amended Complaint as follows:

1. Admit the allegations contained in paragraphs 20, 26, 33, 34, 35, 40, 113, 116 and 121 of the Second Amended Complaint.
2. Deny the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 30, 36, 38, 39, 42, 43, 44, 46, 47, 50, 51, 52, 68, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 105, 106, 107, 108, 109, 110, 111, 112, 114, 115, 118, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 192, 193, 194, 195, 196, 197, 199, 200, 201, 202, 204, 205, 206, 207, 208, 209, 210, 213, 214, 215, 216, 217 and 218 of the Second Amended Complaint.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 23, 24, 28, 32, 49, 56, 58, 59, 60, 61, 62, 63, 64, 66, 67, 69, 71, 72, 73, 117, 175 and 212 of the Second Amended Complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth of the content of the unnumbered caption on page 2 of the Second Amended Complaint.

5. Deny the allegations contained in paragraphs 1, 15, 16, 22, 27, 97, 154, 169, 190, 198, 203 and 211 of the Second Amended Complaint, except admit that plaintiffs purport to proceed as stated therein.

6. The allegations contained in paragraphs 21, 25, 29, 31, 98, 99, 100, 101, 102, 103, 104, 155, 170, 171, 172, 173, 174, 176 and 191 of the Second Amended Complaint set forth conclusions of law, rather than averments of fact, to which no response is required.

7. Deny the allegations in paragraph 17 of the Second Amended Complaint, except admit that a purported Notice of Claim was filed with the City on the plaintiffs' behalves.

8. Deny the allegations in paragraph 18 of the Second Amended Complaint, except admit that the City took an oral examination of Charles Dempsey pursuant to General Municipal Law Section 50-h.

9. Deny the allegations set forth in paragraph 19 of the Second Amended Complaint, except admit that plaintiffs' purported claim has not been settled or adjusted by the City.

10. Deny the allegations set forth in paragraph 37 of the Second Amended Complaint, except admit that defendant Algarin entered the back yard of 49 Kosciusko Street while Officer Gorman was searching the individual he had detained.

11. Deny knowledge or information sufficient to form a belief as to whether plaintiff Charles Dempsey was alert to the fact that Officer Algarin was in his back yard.

12. Deny knowledge or information sufficient to form a belief as to whether plaintiff Charles Dempsey knew that Officer Algarin was in his back yard when he released the dog.

13. Deny the allegations contained in paragraph 48 of the Second Amended Complaint, except admit that Tesla immediately charged at Officer Algarin.

14. Deny the allegations contained in paragraph 53 of the Second Amended Complaint, except admit that Officer Algarin shot the dog, which was aggressively charging at him, in order to protect himself from imminent danger.

15. Deny the allegations in paragraph 54 of the Second Amended Complaint, except admit that Officer Algarin pointed his firearm at Charles Dempsey.

16. Deny the allegations in paragraph 55 of the Second Amended Complaint, except admit that Officer Algarin instructed Charles Dempsey to get back.

17. Deny the allegations in paragraphs 57 and 65 of the Second Amended Complaint, except admit that after plaintiffs' dog was shot, Charles Dempsey told police to get out of his yard.

FIRST AFFIRMATIVE DEFENSE

18. The Second Amended Complaint fails to state a claim for relief.

SECOND AFFIRMATIVE DEFENSE

19. Defendants Algarin and Gorman acted in an objectively reasonable manner and did not violate a clearly established federal right of which a reasonable officer would have known. As such, these defendants are entitled to qualified immunity.

THIRD AFFIRMATIVE DEFENSE

20. It was reasonable for defendants to believe that the back yard area of plaintiffs' home was not curtilage.

FOURTH AFFIRMATIVE DEFENSE

21. Punitive damages are not available against the City of Rochester.

FIFTH AFFIRMATIVE DEFENSE

22. Plaintiffs' compensatory damages related to the death of their pet dog are limited to the economic value of the dog.

SIXTH AFFIRMATIVE DEFENSE

23. The entry into and search of the back yard of plaintiff's home was justified by exigent circumstances, including the doctrine of hot pursuit.

SEVENTH AFFIRMATIVE DEFENSE

24. The actions of the defendants were at all times objectively reasonable and sound under the 4th Amendment.

EIGHTH AFFIRMATIVE DEFENSE

25. None of plaintiff's alleged injuries were proximately caused by any act or omission of the defendants.

WHEREFORE, defendants demand judgment dismissing plaintiffs' Second Amended Complaint, together with the costs and disbursements of this action and such other and further relief as may be just and proper.

DATED: January 4, 2021

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